Supreme Court, U.S.
FILED

No.

031212 FEB 2 - 2004

In The

Supreme Court of the United States

ROSEMARIE CLAMPITT

V.

STARVING STUDENTS, INC.

On Petition For Writ Of Certiorari
To The Arkansas Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Rosemarie Clampitt
P.O. Box 21414
Hot Springs, AR 71903-1414
Telephone: (501) 760-3564

QUESTIONS PRESENTED

Whether a person has been denied due process and equal protection guaranteed by the U.S. CONSTITUTION, Amendment 14, § 1, when a lower court ignores a fair preponderance of hard evidence presented in a motion as to the wrongdoings by an Officer of the Court.

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PETITION FOR WRIT OF CERTIORARI

This Petitioner respectfully requests that a writ of certiorari be issued to review the decision and order of the Arkansas Court of Appeals on June 4, 2003, on these issues of substantial importance, that Appellant was denied due process in the lower court and the Arkansas Court of Appeals did not address the issue of denial of due process when it expressly combined due process with abuse of discretion in its opinion.

OPINIONS BELOW

The "NOT FOR PUBLICATION" opinion of the Arkansas Court of Appeals is reformatted and provided here as APPENDIX A. The Order of the Arkansas Trial Court (Circuit Court) is reformatted and provided here as APPENDIX B. The Decision of the Arkansas Court of Appeals Denying a Rehearing is reformatted and provided as APPENDIX C. The decision of the Arkansas Supreme Court Denying Review is reformatted and provided as APPENDIX D.

STATEMENT OF JURISDICTION

The Memorandum Decision of the Arkansas Court of Appeals was entered June 4, 2003. The Petition For Rehearing was timely filed on June 23, 2003, and was Denied by the Court of Appeals on July 30, 2003. A timely Petition For Review was filed on June 23, 2003, and was denied by the Arkansas Supreme Court on September 4, 2003. On December 8, 2003, the Honorable Justice Thomas extended the time to file this Petition to and including February 1, 2004, which is a Sunday.

The jurisdiction of this Court is invoked under 28 U.S.C.§1254(1). Original jurisdiction of the Circuit Court was invoked under 28 U.S.C.§1343.

STATUTORY/CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONSTITUTION, Amendment XIV, §1.

STATEMENT OF THE CASE

I guess the question is what is due process, because I submit that an illusory act of a right to be heard is not what our forefathers intended when they drafted our Constitution.

This Petitioner hired Respondent, Starving Students, Inc., a professional moving company, to move all of my personal property, including antiques, from Los Angeles, California, to Marion, Arkansas. This Petitioner paid $5,000.00 for the move and lost more than $100,000.00 from damage. Starving Students and this Petitioner did not even know where the shipment was for four (4) months after it was delivered not on the date agreed upon and in a blinding rain storm and to an outside storage facility randomly chosen by the driver or the moving company. My name was nowhere in the storage records. It was a full sixty-five foot van.

I never learned who chose the storage facility, since I was denied discovery with no answers or objections to my 7 Interrogatories properly served on Defendant and its counsel, Elton A. Rieves, IV, on December 28, 2001.

Petitioner hired attorney Constance G. Grayson of West Memphis, Arkansas, to handle this case against the moving company. Unbeknown to me, Mrs. Grayson granted the defendants ten (10) months of extensions to file a simple Answer to a simple Complaint, when Arkansas law provides for 20 days. Also unbeknown to me, I learned later that Mrs.Grayson never initiated any discovery whatsoever before she suddenly withdrew as attorney of record after a Motion To Compel was filed by the Defendant.

A Hearing was held on Defendant's motion before Judge Victor Hill, and Judge Hill made an order on December 7, 2001. The order was reduced to writing by Mr. Rieves and the last two lines were not what the Judge ordered. On December 31, 2001, in the afternoon, I found Judge Hill at the courthouse in Marion, Arkansas, and told him that he signed an order which was not accurate, and that I could not be in Arkansas in January.

Judge Hill called Mr. Rieves on the telephone while I was with Judge Hill in the clerk's office. As detailed in PLAINTIFF'S REQUEST FOR CORRECTION OF ORDER AND SANCTIONS AGAINST DEFENDANT AND DEFENDANT'S COUNSEL, filed February 8, 2002, this was the last day that Judge Hill would be in this circuit, and he made a docket entry stating that he would leave the disputed matter for the next judge to decide.

In compliance with Judge Hill's Order, this Petitioner timely provided 234 pages of documents to the Defendant. Also, in compliance with the order, I tried to schedule my deposition, but my attempts failed as Mr. Rieves refused to schedule my deposition.

My above referenced motion detailed and evidenced the wrongdoings by Mr. Rieves and was calendared for Hearing on June 11, 2002. It was the only motion calendared in this case, but Mr. Rieves' motion was the only one listed.

The Reporter's Transcript, provided to the Arkansas Court of Appeals in APPELLANT'S ABSTRACT, BRIEF AND ADDENDUM, filed November 25, 2002, evidences that the Hearing with our new Judge, David Goodson, was only illusory as a right to be heard and equal protection under the law, since Judge Goodson never questioned any of the wrongdoings by Mr. Rieves and the Defendant with their appalling "response"

to the Interrogatories and the proof that I attempted to schedule my deposition to comply with the order by Judge Hill, but that Mr. Rieves refused.

I provided the Reporter's Transcript of the Hearing with Judge Hill, not the Defendant, and Defendant's Motion For Sanctions was grounded only on the last two (2) lines of Judge Hill's written order which Mr. Rieves fabricated. Judge Goodson Dismissed the case from my deposition "still" not having been scheduled, which means that he ignored the evidence in my motion and what I said at the Hearing. [Reporter's Transcript, page 244 of APPELLANT'S ABSTRACT, BRIEF, AND ADDENDUM provided to the Arkansas Court of Appeals.]

The Arkansas Court of Appeals, in its Decision, stated that it found that the last two (2) lines of the written order signed by Judge Hill were not what he said at the Hearing, but that they were "constrained to review the written order actually entered by Judge Hill because a ruling from the bench does not become effective until it is reduced to writing, signed by the Judge, and filed of record with the court clerk."

I submit that the order was not a final order and could have been corrected by Judge Goodson. In fact, Judge Hill made the entry in the Docket on December 31, 2001, that he was leaving the dispute as to the last two (2)lines of his order for the new judge to decide, and my motion was for the correction of the order.

REASONS
FOR GRANTING THE PETITION

The Court of Appeals cited Morrell v Morrell, 48 Ark.App.54, 889 S.W.2d 772(1994) in its decision that the Court was "constrained to review the written order by Judge Hill," even though the Court found that the written order was not what Judge Hill said. In Morrell, the issue was that a Judge was free to alter his decision prior to it being written, signed and filed with the court. I submit that such is not the situation here. Judge Hill never said what Mr. Rieves wrote regarding the two week period and for the deposition to take place in Crittenden County. It was all fabricated by an Officer of the Court, in bad faith.

There were prevailing circumstances for my deposition to not have been scheduled, "still," and Judge Goodson denied this Petitioner due process by not even questioning this Petitioner or Mr. Rieves at the Hearing on the egregious wrongdoings detailed with hard evidence in my motion and at the Hearing. My letter of January 7, 2002, faxed and mailed to Mr. Rieves telling him that I had sent the 234 pages of documents and my attempt to schedule my deposition should be evidence enough that that I was complying with Judge Hill's order. I had to stay in Memphis, for the month of December, to attempt to find the documents in open storage with atrociously damaged boxes, in the snow and freezing rain, while having to use a walker for mobility, and I served INTERROGATORIES on the Defendant on December 28, 2001. I was cooperative with discovery.

Mr. Rieves was questioned by the Court of Appeals as to why he did not schedule my deposition in December while I was in the Arkansas area and he said

that the order by Judge Hill was that it had to be scheduled in January.

Mr. Rieves intentionally fabricated the last two (2) lines of Judge Hill's written order so that he could get sanctions and even asked for terminating sanctions when he knew that Judge Hill had said it would be dismissed without prejudice. As detailed in APPELLANT'S ABSTRACT, BRIEF AND ADDENDUM, Mr. Rieves and I discussed Judge Hill's order in the hall outside the courtroom immediately following the December 7 Hearing and there was no question as to what Judge Hill ordered, as I stated in my declaration.

It was the Defendant who abused discovery, not this Petitioner. As I stated in APPELLANT'S REPLY BRIEF, the Appellee only re-hashed moot issues which were decided by Judge Hill at the Hearing held on December 7, 2001, as being irrelevant, i.e., deposition schedulings which transpired prior to the unexpected withdrawal of my legal counsel, Constance Grayson. [Appellant's Abstract: p.7] Judge Hill adjudicated that issue, and yet Mr. Rieves used it as a live issue to support his MOTION FOR SANCTIONS.

Continuing in APPELLANT'S REPLY BRIEF, on page 2, The issues on appeal are 1) The intentional falsification of an order by an officer of the court which resulted in the dismissal of a case against his client when the lower court, on June 11, 2002, abused its discretion and held against the fair preponderance of the evidence and 2)Denial of due process when this Plaintiff/Appellant had a proper and timely Motion duly calendared in the lower court which presented a fair preponderance of hard evidence as to more egregious wrongdoing by the same officer of the court, which was ignored by the lower court.

The June 11, 2002 reporter's transcript also evidences the fact that the Defendnt and its counsel made

a mockery of the discovery process with total disrespect for our legal system. Did the Defendant and its counsel ever provide legitimate discovery to the INTERROGATORIES served on them by this Plaintiff, In Propia Persona? No, they did not. Their sole quest was to have this case dismissed and even attempted to have it dismissed with prejudice although Judge Hill had said it would be without prejudice.

The law is clear that an unfavorable decision does not necessarily constitute a violation of due process, but that is when there has been a full Hearing or opportunity for Hearing. The question would then be as to what elements constitute a full Hearing, and this Petitioner contends that the transcript evidences that the Hearing held on June 11, 2002, by Judge Goodson, was only the appearance of a legitimate Hearing, as I detailed in the Argument section of APPELLANT'S ABSTRACT, BRIEF AND ADDENDUM.

In Harris v Wyrick, 634 F.2d 1152(1980), the United States Court of Appeals, Eighth Circuit, citing Maggitt v Wyrick, 533 F.2d 383, 385(8th Cir.1976)stated that to establish a denial of due process, a petitioner must prove that an error asserted was of such magnitude that it failed to afford him fundamental fairness which is the essence of due process. U.S.C.A.Const.Amends.5, 14.

There was certainly no fundamental fairness in the lower court with Judge Goodson and I believe that the Court of Appeals denied this Petitioner due process when it did not address the issue separately, but rather combined it into an abuse of discretion. Is it within the power of a Judge to use discretion as to whether he wants to afford a person due process in a courtroom? It appears that Judge Goodson never read my motion because he never questioned Mr. Rieves or myself regarding the charges made in my motion, detailing the egregious acts

by Mr. Rieves. In Ward v Dapper Dan Cleaners & Laundry, Inc., 309 Ark.192, 194-195(1992), the Supreme Court of Arkansas held that "when violation of Rule 11 occurs, the Rule makes sanctions mandatory." Judge Goodson never questioned anything that was in my motion and I was denied due process.

The question of whether a person has been denied due process and equal protection guaranteed by the U.S. CONSTITUTION, Amendment 14 §1, when a lower court ignores a fair preponderance of hard evidence presented in a motion as to the wrongdoings by an Officer of the Court arises on the basis of simple and undisputed facts as detailed in my motion before Judge Goodson, PLAINTIFF'S REQUEST FOR CORRECTION OF ORDER AND SANCTIONS AGAINST DEFENDANT AND DEFENDANT'S COUNSEL, which commenced at page 113 in APPELLANT'S ABSTRACT, BRIEF AND ADDENDUM, filed November 25, 2002.

CONCLUSION

This Petitioner submits that a gross injustice has occurred in this case and I respectfully request that a Writ of Certiorari be granted.

Respectfully submitted,

Rosemarie Clampitt
Petitioner, In Propia Persona

P.O. Box 21414
Hot Springs, AR 71903-1414
Telephone: (501)760-3564

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, JUDGE

DIVISION III

CA02-1072

June 4, 2003

ROSEMARIE CLAMPITT
APPELLANT

v.

STARVING STUDENTS, INC.
APPELLEE

AN APPEAL FROM CRITTENDEN COUNTY
CIRCUIT COURT [CIV-00-252]

HONORABLE DAVID GOODSON,
CIRCUIT JUDGE

AFFIRMED

> This is a *pro se* appeal from an order dismissing without prejudice appellant's complaint as a sanction for her failure to comply with a discovery order. We affirm.

While residing in California, appellant Rosemarie Clampitt contracted with appellee Starving Students, Inc., to move appellant's household furnishings from California to Crittenden County, Arkansas. On May 31, 2000,

APPENDIX A

appellant, represented by counsel, filed suit against appellee, seeking damages for negligence and breach of contract. After several agreed-upon extensions of time, appellee filed an answer to the complaint on May 24, 2001. On August 1, 2001, appellee filed and sent to appellant's counsel a notice to take appellant's deposition on August 6, 2001. On September 26, 2001, appellee filed and sent to appellant's counsel another notice to take appellant's deposition on October 12, 2001. On October 26, 2001, appellee filed a motion to compel discovery, alleging that appellant had failed toappear for the two depositions[1] and that appellant had failed to answer certain requests for production of documents. Appellant's counsel was permitted to withdraw by order dated October 30, 2001, and filed of record on November 7, 2001. The motion to compel was set for hearing on December 7, 2001.

The hearing on appellee's motion to compel discovery was held before Circuit Judge Victor Hill. After hearing appellant's explanation for why discovery had not occurred, Judge Hill found that the imposition of sanctions would not be appropriate. After a further colloquy between Judge Hill and appellant over the amount of time appellant needed to respond to the request for production of documents and appellant responding "a couple of months," Judge Hill ruled from the bench: "I'm going to give you 30 [days to] compile these documents and get them to [appellee's] attorney, and two weeks thereafter to schedule a deposition. And if you do not, my order will reflect that the case will be dismissed without prejudice." The written order dated December 27, 2001, and filed on December 31, 2001, reflected that appellant was required to respond to appellee's requests for production of documents not later than January 7, 2002,

and then provided "that [appellant] submit to an oral deposition in Crittenden County, Arkansas, sometime during the week of January 7 or January 14, 2002."

Judge Hill was made aware of the conflict between his oral ruling and the written order during a conference call with appellant and appellee's counsel on December 31, 2001. Judge Hill made a docket notation of the call and of his decision to allow the next judge to whom the case was assigned to resolve the conflict.2

On January 7, 2002, appellee filed and served on appellant a notice to take appellant's deposition at 10:00 a.m. on January 18, 2002. On January 18, 2002, appellee filed a motion for sanctions, reciting the prior history of the case and alleging that appellant had failed to appear for the depositions within the time provided by Judge Hill's order. The motion sought dismissal of appellant's action with prejudice, or, in the alternative, other appropriate sanctions such as payment of appellee's attorney's fees. On February 8, 2002, apparently in response to appellee's motion, appellant filed a "Request for Correction of Order and Sanctions against Defendant and Defendant's Counsel," in which she sought correction of Judge Hill's written order to conform with his oral ruling from the bench. Appellant alleged that a transcript of the December 7 hearing before Judge Hill would confirm her assertion that Judge Hill only intended that appellant's deposition be scheduled during the weeks of January 7 or January 14. Appellant also alleged that appellee's counsel prepared the order in bad faith and sought sanctions against counsel under both Ark. R. Civ. P. 11 and Ark. R. Civ. P. 37.

A hearing on the two motions was held on June 11, 2002, before Judge Goodson. The parties agreed that appellant had complied with that part of Judge Hill's order concerning appellant's response to the request for production of documents. Appellee's counsel recited the litigation history up to that point in time. Appellant argued that appellee's counsel "fabricated" in bad faith that part of Judge Hill's order requiring her actual attendance at the deposition instead of having the deposition scheduled during the two-week period and that the transcript from the hearing before Judge Hill confirmed her interpretation of the order. Appellant also argued that appellee's objections to her interrogatories were improper. In response to a question from the court, appellant admitted that her deposition had not been scheduled. The trial court then dismissed appellant's action without prejudice and denied all other relief sought by either party. A written order memorializing the ruling was entered the same afternoon. This appeal followed.[3]

Appellant argues (1) that she was denied due process; and (2) that the lower court held against the fair preponderance of the evidence. Basically, both points argue that the trial court abused its discretion in dismissing her action. We discuss both points together.

The imposition of sanctions for the failure to make discovery rests in the trial court's discretion and will not be overturned absent an abuse of that discretion. *Viking Ins. Co. v. Jester*, 310 Ark. 317, 836 S.W.2d 371 (1992); *Goodwin v. Harrison*, 300 Ark. 474, 780 S.W.2d 518 (1989). A trial court's exercise of discretion in granting severe Rule 37 sanctions for flagrant discovery violations has been upheld several times. *Id.*; *Rodgers v. McRaven's Cherry Pickers, Inc.* 302 Ark. 140, 788 S.W.2d 227

(1990); *Cagle v. Fennel*, 297 Ark. 353, 761 S.W.2d 926 (1988). For example, our courts have affirmed dismissals withprejudice for failing to answer interrogatories, *Dunkin v. Citizens Bank of Jonesboro*, 291 Ark. 588, 727 S.W.2d 138 (1987), produce tax returns in response to requests for production of documents, *Cook v. Wills*, 305 Ark. 442, 808 S.W.2d 758 (1991), and for failing to attend one's own deposition. *Cagle v. Fennel, supra*. The trial judge is in a superior position to balance the explanation offered for noncompliance with the discovery order and the need for sanctions for appellant's failure to comply with that order. *See Graham v. Sledge*, 28 Ark. App. 122, 771 S.W.2d 296 (1989). The fact that the sanction imposed by the trial court was severe is of no consequence, as Rule 37 specifically provides for the dismissal of an action where a party fails to provide discovery. *Calandro v. Parkerson*, 333 Ark. 603, 970 S.W.2d 796, 799 (1998).

> Authority for the trial court's action can be found in our rules of civil procedure. Arkansas Rule of Civil Procedure 26(b)(1) provides that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the issues in the pending actions...." Rule 37(d) states that if a party fails to attend his deposition "the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B) and (C) of subdivision (b)(2) of this rule." Rule 37(b)(2)(C) then permits the court to enter an order "dismissing the action or proceeding or any part thereof."

This is a situation in which appellant and counsel for appellee have different interpretations of Judge Hill's intentions in his order. Appellant took the position that Judge Hill meant only that she had to agree to a date for her deposition within the two-week period. Appellee argues that the deposition was to be conducted during that time period. Appellantargued below and argues here that the transcript of the December 7 hearing supports her interpretation of Judge Hill's order. A review of the transcript of the hearing before Judge Hill confirms appellant's interpretation of the order. However, we are constrained to review the written order actually entered by Judge Hill because a ruling from the bench does not become effective until it is reduced to writing, signed by the judge, and filed of record with the court clerk. *Standridge v. Standridge*, 298 Ark. 494, 769 S.W.2d 12 (1989); *Morrell v. Morrell*, 48 Ark. App. 54, 889 S.W.2d 772 (1994). Judge Goodson, in resolving that conflict, found that appellant admitted that she did not schedule her deposition within the two-week period provided for by Judge Hill's order. Accepting appellant's interpretation as correct, she still did not comply with Judge Hill's discovery order by scheduling her deposition within the designated time. Appellant had a duty to obey Judge Hill's order as written until the order was set aside or overturned. *Potter v. Easley*, 288 Ark. 133, 703 S.W.2d 442 (1986); *Ex Parte Coffelt*, 239 Ark. 324, 389 S.W.2d 234 (1965). It was therefore within Judge Goodson's discretion to dismiss appellant's action without prejudice.

Appellant appears to argue that Judge Hill's decision that no sanctions should be imposed somehow precluded Judge Goodson from imposing sanctions or that Judge Goodson somehow "overruled" Judge Hill's order. There is nothing in Judge Hill's comments from the bench or in the written order that would indicate that Judge Hill intended to preclude the imposition of sanctions in the future. We do not believe that Judge Goodson "overruled" Judge Hill's order; rather, Judge Goodson's order only enforced Judge Hill's order and was consistent with Judge Hill's pronouncement from the bench at the conclusionof the December 7 hearing that appellant's failure to comply with discovery would result in dismissal of the action. *See Graham v. Sledge*, *supra*.

Affirmed.

Bird and Roaf, JJ., agree.

1 The motion stated that appellant's counsel notified appellee prior to each deposition that appellant would not attend the deposition.

2 Judge Hill entered an order reassigning the case to Circuit Judge John Fogleman, apparently because of changes in that judicial district's administrative plan under Amendment 80. Judge Fogleman entered an order on February 26, 2002, transferring the case to Circuit Judge David Goodson due to an unspecified conflict.

3 Appellee filed a notice of cross-appeal. However, appellee makes no argument for reversal and expressly abandons the cross-appeal in its brief.

FILED 2002 JUN 11 PM 3:27
IN THE CIRCUIT COURT OF CRITTENDEN COUNTY, ARKANSAS CIVIL DIVISION

ROSEMARIE CLAMPITT PLAINTIFF

V NO. CIV-2000-252
STARVING STUDENTS, INC. DEFENDANT

ORDER OF DISMISSAL WITHOUT PREJUDICE

Now on this 11th day of June, 2002, this matter comes on for hearing on Defendant's Motion for Sanctions filed January 18, 2002 and the Plaintiff's Request For Correction of Order and Sanctions against the Defendant and the Defendant's counsel filed February 19th, 2002. Plaintiff, Rosemarie Clampitt, appears in person pro se, and the Defendant appeared by its attorney, Elton Rieves, IV.

Based upon a review of the transcript of the proceedings before the Honorable Victor Hill, Circuit Judge, on December 7th, 2001, the court finds the Plaintiff's Complaint should be and hereby is dismissed without prejudice.

All further relief requested by either party was denied by the court. The Crittenden County Circuit Clerk is hereby directed to mail a file-marked copy of this order to the Plaintiff by regular mail addressed to Ms. Rosemarie Clampitt, P.O. Box 351494, Los Angeles, California 90035; and, Ms. Rosemarie Clampitt, P.O. Box 21414, Hot Springs, AR 71903-1414; and to Elton Rieves IV, P.O. 1359, West Memphis, AR 72303.

IT IS SO ORDERED.

S/
DAVID GOODSON, CIRCUIT JUDGE

APPENDIX B

Office of the Clerk
Supreme Court of the State of Arkansas
Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

July 30, 2003

Rosemarie Clampitt
P.O. Box 21414
Hot Springs, AR 71903

RE: CA 02 01072
Rosemarie Clampitt v. Starving Students, Inc.

Dear Ms. Clampitt:

The Arkansas Court of Appeals made the following order today in the above styled case:

"Petition for Rehearing is denied."

Sincerely,

S/

Leslie W. Steen, Clerk

LWS:mmf

Cc: Elton A. Rieves,IV
Donna Palmer, CircuitClerk
(Circuit Court No. CIV-00-252)

APPENDIX C

Office of the Clerk
Supreme Court of the State of Arkansas
Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

September 4, 2003

Rosemarie Clampitt
P.O. Box 21414
Hot Springs, AR 71903

RE: 03-712
Rosemarie Clampitt v. Starving Students, Inc.

Dear Ms. Clampitt:

The Arkansas Supreme Court made the following order today in the above styled case:

"Petition for review is denied."

Sincerely yours,

S/

Leslie W. Steen, Clerk

LWS:jko

Cc: Elton Rieves,IV
Donna Palmer, Clerk
(CIV-00252)

APPENDIX D